

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CHERYL K. HARJO</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,009,543
<b>CENTURY BUSINESS SERVICES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD INSURANCE COMPANY OF THE MIDWEST</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the May 29, 2003 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

Claimant alleges that she injured and aggravated her back while working for respondent through her last day of work on November 15, 2002. In the May 29, 2003 Order, Judge Clark granted claimant's request for both temporary total disability and medical benefits.

Respondent and its insurance carrier contend Judge Clark erred. They first argue claimant failed to prove that her back injury arose out of and in the course of her employment with respondent. They next argue that claimant failed to prove that she provided respondent with timely notice of the accidental injury. Accordingly, respondent and its insurance carrier request the Board to reverse the preliminary hearing Order and deny claimant's request for benefits.

Conversely, claimant contends the Order should be affirmed. Claimant argues that she further injured and aggravated her back as a result of the repeated bending, stooping and lifting that she did in performing her job duties from April through November 15, 2002. Claimant also argues that respondent had notice of her back injury as she advised her supervisor on several occasions that the filing work that claimant performed was causing her back to hurt worse.

The only issues before the Board on this appeal are:

1. Did claimant injure or aggravate her back working for respondent through her last day of work on November 15, 2002?
2. If so, did claimant provide respondent with timely notice of the injury or aggravation?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

The Board finds no reason to disturb the findings and conclusions of the Judge. Accordingly, the May 29, 2003 Order should be affirmed.

The greater weight of the evidence indicates that claimant injured and aggravated her back from April through November 15, 2002, working for respondent. During that period, claimant's job duties included filing records, which required her to repetitively bend, stoop and lift. The Board finds that such work activities aggravated the preexisting scoliosis and degenerative disc disease in claimant's back, and precipitated the December 2002 back surgery that claimant underwent.

An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates a preexisting condition.<sup>2</sup>

The Board also affirms the Judge's finding that respondent had notice of claimant's injury and aggravation. Claimant's supervisor, Mary Lou Tate, testified that by autumn of 2002 she was aware that claimant's back condition was deteriorating as claimant began missing more and more work due to her back. Claimant's supervisor also testified that in early November 2002 respondent modified claimant's job duties due to her back condition and her impending back surgery. Ms. Tate testified, in part:

Q. (Mr. Snider) Why did you modify the job filing duties when you learned that she [claimant] had surgery being scheduled?

A. (Ms. Tate) I was directed to do that by our HR department.

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<sup>1</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

Q. The human resources department?

A. Yes.

. . . .

Q. Was there a concern that the filing activities would aggravate her back condition?

A. That may have been their concern.

Q. Was that one of your concerns?

A. I would say yes.<sup>3</sup>

Moreover, before her last day of working for respondent on November 15, 2002, claimant on several occasions advised her supervisor that the filing work was hurting her back.

For preliminary hearing purposes, claimant has established that she either injured or aggravated her back while working for respondent from April through November 15, 2002. Claimant has also established, as required by K.S.A. 44-520, that respondent had timely notice and knowledge of the back injury and aggravation. Accordingly, claimant is entitled to receive workers compensation benefits for her back condition.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>4</sup>

**WHEREFORE**, the Board affirms the May 29, 2003 Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2003.

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BOARD MEMBER

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<sup>3</sup> Tate Depo. at 37-38.

<sup>4</sup> K.S.A. 44-534a(a)(2).

c: Michael L. Snider, Attorney for Claimant  
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director